

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Creation of a Low
Power Radio Service

MM Docket No. 99-25
RM-9208
RM-9242

COMMENTS OF:

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I file these comments on July 15, 1999, concerning the FCC's Notice of Proposed Rulemaking regarding the creation of a low power radio service, MM Docket No. 99-25, as a shareholder in Mohnkern Electronics, Inc., an S corporation owned by myself and my father, which is licensee of a Class D AM facility in Terrell, Texas.

I have great concern over the ownership limitations as proposed, the need for an LPFM service as proposed, and the exclusion of new stations created under a new LPFM service from certain regulations in effect now for "full power" broadcasters.

In its discussion of the need for a Low Power Radio Service (section III-A, paragraph 10), the Federal Communications Commission states:

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"...we are concerned that consolidation may have a significant impact on small broadcasters and potential

new entrants into the radio broadcasting business by driving up station prices, thereby exacerbating the difficulty of entering the broadcast industry and of surviving as an independent operator."

Later statements in section III-F, "Ownership and Eligibility," the Commission seems inconsistent with its stated concern for small broadcasters by specifically excluding existing broadcasters from LPFM ownership. It also appears the commission singles out AM licensees in this exclusion, when it states in the same paragraph, "... we are not proposing to give an application preference to AM station licensees, as urged by Crusading Broadcasting Ministry, Inc. and Robert M. Stevens." It is not my opinion that an application preference is needed. However, I believe the independent operator should be given an equal opportunity to obtain an LPFM license if such a service is created.

In many small communities there are existing "full power" independent operators with Class D AM facilities that have no, or very low, authorized power for nighttime operation. For those with low power operation at night, in many instances total coverage of the licensed community is not possible. The creation of the LP1000, 1000-watt Primary Service, would give these existing small broadcasters the

ability to better serve their communities at night, augmenting their daytime service, which, in most cases serves an area considerably larger than that proposed for the LP1000 station. Therefore, the Commission's suggestion that "we should permit AM licensees to file applications contingent on the divestiture of their AM station in the event they are successful in obtaining an LPFM station" is impractical. Such a requirement for the AM operator to give up its AM station would require the loss of service to those within the daytime coverage of the AM station's signal in order to better serve those within its city of license at night. This improved nighttime coverage at the expense of daytime coverage is inconsistent with the Commission's stated concern for small broadcaster's ability to survive, as noted earlier.

The preclusion of small AM broadcasters from LPFM ownership serves to preclude them from what may be their only opportunity to upgrade their existing service to their communities. This inability for the small AM broadcaster to upgrade service again seems inconsistent with the Commission's concern for FM licensees' ability to upgrade facilities. In section III-B, paragraph 21, "Spectrum Priority," the Commission voices concern over "the extent to

which the introduction of such [LPFM] stations could affect existing [FM] broadcaster's ability to modify their facilities."

The creation of the LPFM class of stations, and the preclusion of the independent operator/Class D AM licensee from LPFM ownership, only serves to further threaten the survival of these broadcasters with increased competition in small communities from LPFM stations, especially LP1000 class stations. The Class D AM licensee should have at least an equal opportunity to obtain an LPFM license, not as a substitute to the AM station license, but as a supplement to nighttime coverage.

I must also question the real need for a new LPFM service if it is not made available to present small broadcasters, as well as new entrants. The Commission in Section III(A), paragraph 13, in a discussion of the need for low power radio service, states "...perhaps a station could secure the resources to provide live coverage of high school sporting events or local civic or community meetings or events." In many small communities in which there is now broadcast service, the small independent operator already provides this service, and the sale of advertising in high school

sporting events provides the majority of that station's income. The broadcast of local civic or community meetings, such as the city council and local school board meetings, is also provided by our locally owned Class D AM station. These broadcasts are provided as a community service, with no sponsorship or underwriting. We have also broadcast such events as concerts by the Terrell High School Band, the activities at the annual Terrell Heritage Jubilee, and provided a live broadcast from neighboring Garland Recycles Day activities, strictly as a public service. We also serve our community by working with the Terrell Kiwanis Club in its effort to collect toys for local children each Christmas with its Toys for Tots campaign. We assist, too, in the promotion of the Kiwanis Club's major fund raising event each year, as well as the fund raising events of other Terrell service clubs. In conjunction with the Texas Department of Human Services, we have been involved in collecting Christmas presents for area residents, those who are elderly, handicapped, or unable to afford even the barest necessities of life. I can hardly believe ours is the only small market station involved in it's community, therefore I question the need for the introduction of such a redundant service. If the LPFM service is not made available to help the current licensee in the community to

improve service, it will only serve to further deteriorate conditions for small broadcasters in a time when survival as a small, independent operator is already difficult. I also question the reasoning behind the introduction of such competition in these communities, while excluding the current licensed independent operator from even an equal opportunity, without penalty, to obtain an LPFM license. The exclusion of current small operators from ownership in the LPFM service appears inconsistent with the Commission's concern over independent operator survival.

If the Commission does decide to create a low power FM service, perhaps a more equitable ownership limitation would be to exclude corporate ownership. In so doing, ownership in the LPFM service would be limited to individuals only, thereby not creating the "gross inconsistency with the more liberal ownership limits under section 202(b) of the Telecommunications Act of 1996," as pointed out by Commissioner Harold W. Furchtgott-Roth in his dissenting statement. This would still allow an independent operator, whether or not incorporated, to apply as an individual for an LPFM license. If owned by a small broadcaster, the LPFM station could be required to provide separate programming, for a certain percentage of the broadcast day, from that of

the other licensed facility owned by the same operator. This would allow for locally oriented programming within the range of the LPFM station, while those within the larger daytime coverage of the Class D AM facility would receive programming applicable to their communities.

As a shareholder in Mohnkern Electronics, Inc., licensee of a Class D AM facility in Terrell, Texas, I realize the financial aspect of operating in a small market. It is difficult, at best, to survive in the climate of consolidation. Locally owned businesses are closing their doors as national chain discount stores attract more customers, resulting in a diminishing advertising base. The large, national chains are less likely to advertise on a small market station when their advertising budget is controlled elsewhere. The new LPFM service would have to attract money from businesses in its service area, either as commercial sales, or as underwriting for the LPFM station if non-commercial. In a market with an existing independent operator, dividing this income base even more only serves to cause hardship on all. If the stations survive, the diminished ability to fund local programming defeats the commission's intent to increase local programming with the introduction of the LPFM service.

Although I do not believe the LPFM service should be implemented as it is now proposed, if the Commission proceeds, stations created under a new LPFM service should adhere to the same regulations as current "full power" broadcasters. In my opinion, they should be commercial, if placed in the part of the FM band now dominated by commercial stations, and non-commercial if in the part of the band allocated exclusively for non-commercial stations.

There should be no relaxed rules as to second and third adjacent channel interference. All should face the same financial responsibilities as the "full power" broadcasters in the payment of filing fees and regulatory fees. The policing of such a service will potentially create an onerous regulatory burden on the commission, and as current "full power" broadcasters annually pay a regulatory fee to the commission to fund this regulatory service, so should the LPFM service pay for its regulatory burden on the commission.

If these new stations are truly created to provide community service, then there is no question they should have to participate in the Emergency Alert System, and install the EAS equipment now required in all stations today. Consider

the consequences of an LPFM station providing programming for a small community, attracting those listeners away from the "full power" broadcaster, if they do not participate in the Emergency Alert System. Those listening, and depending on the LPFM station for "local" programming, could potentially miss being alerted of impending severe, life threatening weather conditions. Severe weather conditions can develop quickly, and the recognition of a need for a more efficient method to disseminate this information was behind the development of the Emergency Alert System. Why, then should we weaken the new system, developed to be superior to the older Emergency Broadcast System, by allowing what could amount to a large number of "local" or "community" stations to not participate? This could only result in slowing or preventing the public's receipt of such warnings and could cost lives.

I am not entirely against the creation of some low power service. I sincerely hope the Commission will consider allowing lower power FM stations where they can fit under current regulations. However, an equal opportunity should be afforded all individuals to obtain such a station, with the only limitation being no corporate ownership.